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INTERSTATE COMMERCE COMMISSION

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## Lease of Railroad Equipment

*Dated as of June 1, 1975,*

BETWEEN

HERCULES INCORPORATED,

AND

UNITED STATES TRUST COMPANY OF NEW YORK,  
*as Trustee*

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## LEASE OF RAILROAD EQUIPMENT

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**LEASE OF RAILROAD EQUIPMENT** dated as of June 1, 1975, between HERCULES INCORPORATED, a Delaware corporation (hereinafter called the Lessee), and UNITED STATES TRUST COMPANY OF NEW YORK, a New York corporation, as Trustee (hereinafter, together with its successors and assigns, called the Owner-Trustee) under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement), with GENERAL ELECTRIC CREDIT CORPORATION (hereinafter called the Owner).

WHEREAS the Owner-Trustee and the Lessee are entering into a conditional sale agreement dated as of the date hereof (hereinafter called the Security Document) with General American Transportation Corporation (hereinafter called the Builder) wherein the Builder agrees to manufacture, sell and deliver to the Owner-Trustee the units of railroad equipment described in Schedule A hereto (hereinafter called the Equipment); and

WHEREAS the Builder will assign certain of its interests in the Security Document to American United Life Insurance Company (hereinafter, together with its successors and assigns, called the Vendor) pursuant to an Agreement and Assignment (hereinafter called the Assignment); and

WHEREAS the Lessee desires to lease all the units of the Equipment, or such lesser number (hereinafter called the Units) as are delivered and accepted and settled for under the Security Document at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS the Owner-Trustee will assign this Lease for security to the Vendor pursuant to an Assignment of Lease and Agreement (hereinafter called the Lease Assignment) and the Lessee will consent to the Lease Assignment pursuant to a Lessee's Consent and Agreement (hereinafter called the Consent);

NOW, THEREFORE, in consideration of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Owner-Trustee hereby leases the Units to the Lessee upon the following terms and conditions:

§1. *Net Lease.* This Lease is a net lease. Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein provided, the Lessee shall not be entitled

to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Owner-Trustee or the Owner under this Lease or under the Security Document, including the Lessee's rights by subrogation thereunder to the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Owner-Trustee or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or the bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder in accordance with the terms hereof shall be final and the Lessee shall not seek to recover all or any part of such payment from the Owner-Trustee, the Owner, or the Vendor for any reason whatsoever.

§2. *Delivery and Acceptance of Units.* The Owner-Trustee hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Security Document. Each delivery of a Unit to the Owner-Trustee under the Security Document shall be deemed to be a delivery hereunder to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Owner-Trustee under the Security Document. Upon or prior to such delivery, the

Lessee will cause an employee or agent of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit on the Closing Date (as defined in Article 4 of the Security Document) with respect to such Unit on behalf of the Owner-Trustee under the Security Document and itself hereunder and execute and deliver to the Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such Unit has been inspected and accepted on behalf of the Lessee and the Owner-Trustee on such Closing Date and is marked in accordance with §5 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§3. *Rentals.* The Lessee agrees to pay to the Owner-Trustee, as rental for each Unit subject to this Lease, one payment on the second Closing Date and thereafter 80 consecutive quarterly payments, payable on each quarterly anniversary date of the second Closing Date, in each year commencing on the first such quarterly anniversary date of the second Closing Date. The rental payment payable on the second Closing Date shall be in an amount equal to .027083% of the Purchase Price (as defined in Article 4 of the Security Agreement) of each Unit then subject to this Lease for each day elapsed from the Closing Date with respect to such Unit to the second Closing Date (computed on the basis of a 360-day year of twelve 30-day months). The remaining 80 quarterly rental payments shall each be in an amount equal to 2.18973% of the Purchase Price of each Unit subject to this Lease on the date of such payments.

If any of the quarterly rental payment dates referred to above is not a business day (as such term is defined in Article 4 of the Security Document) the quarterly rental payment otherwise payable on such date shall then be payable on the next succeeding business day, and no interest shall be payable for the period from and after the nominal date for payment thereof to such next succeeding business day.

Unless the Assignment is not executed and delivered, the Owner-Trustee irrevocably instructs the Lessee to make all the payments provided for in this Lease to the Vendor (or, in the case of the amounts payable to the Owner-Trustee as provided in clause (b) below, so long as no event of default under the Security Document shall have occurred and be continuing, directly to the Owner-Trustee or to such other party

as the Owner-Trustee may from time to time designate), for the account of the Owner-Trustee, in care of the Vendor, with instructions to the Vendor (a) first to apply such payments to satisfy the obligations of the Owner-Trustee under the Security Document known to the Vendor to be due and payable on the date such payments are due and payable hereunder and (b) second, so long as no event of default under the Security Document shall have occurred and be continuing, to pay any balance promptly to the Owner-Trustee or to the order of the Owner-Trustee in immediately available funds at such place as the Owner-Trustee shall specify in writing, *provided, however*, that the Lessee need not give such instructions with respect to the making of any payment provided for by this Lease if such payment is made by the Lessee in accordance with the schedule to be furnished by the Owner-Trustee to the Vendor and the Lessee pursuant to Paragraph 1 of the Lease Assignment. If the Assignment is not executed and delivered, all payments provided for in this Lease shall be made at such place as the Owner-Trustee or the Owner shall specify in writing.

The Lessee agrees to make each payment provided for herein as contemplated by this rental section in immediately available funds as soon as practicable in the city where such payment is to be made.

§4. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§7, 10, 13 and 19 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to §3 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§6, 7, 9 and 14 hereof) shall survive the expiration of the term of this Lease.

It is understood and agreed that the right, title and interest of the Vendor is, by the express terms of the Security Document, subject to the rights and interests hereunder of the Lessee in and to the Equipment.

§5. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of



each Unit, in letters not less than one inch in height, the words, "Ownership Subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c", with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Owner-Trustee's and the Vendor's title to and property in such Unit and the rights of the Owner-Trustee under this Lease and of the Vendor under the Security Document. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace promptly any such name and words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Owner-Trustee and filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Document shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Owner-Trustee an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Vendor's and the Owner-Trustee's interests in such Units and no filing, recording, deposit or giving of notice with or to any other federal, state or local government or agency thereof is necessary to protect the interests of the Vendor and the Owner-Trustee in such Units.

The Units may be lettered with the names or initials of other insignia customarily used by the Lessee or its affiliates. Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

§6. *Taxes.* Whether or not any of the transactions contemplated hereby are consummated, the Lessee agrees to pay, and to indemnify and hold the Owner-Trustee, the Owner, and the Vendor harmless from, all taxes, assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Owner-Trustee, the Owner, the Vendor, the Lessee, the trust estate created by the Trust Agreement or otherwise, by any federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with

respect to: any Unit or any part thereof; the purchase, ownership, delivery, leasing, possession, use, operation, transfer of title, return or other disposition thereof; the rentals, receipts or earnings arising therefrom; or this Lease, the Trust Agreement, the Participation Agreement dated as of the date hereof among the Lessee, the Owner-Trustee and the Owner (hereinafter called the Participation Agreement), the Security Document, the Assignment, the Lease Assignment, any payment made pursuant to any such agreement, or the property, the income or other proceeds received with respect to property held in trust by the Owner-Trustee under the Trust Agreement (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); *excluding, however:* (i) Taxes of the United States or of any state or political subdivision thereof and (if and to the extent that any person indemnified hereunder is entitled to a credit therefor against its United States Federal income taxes or is indemnified by the Lessee pursuant to Paragraph 6 of the Participation Agreement) of any foreign country or subdivision thereof, imposed on or measured solely by the net income or excess profits of the Owner-Trustee (in its individual capacity), the Owner or the Vendor, other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Lease, provided that such Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or jurisdiction on its worldwide income without regard to the transactions contemplated by this Lease shall be excluded whether or not the indemnified party is entitled to a credit against its United States Federal income taxes; (ii) any Taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by the Owner or any transfer or disposition by the Owner resulting from bankruptcy or other proceedings for the relief of creditors in which the Owner is the debtor, whether voluntary or involuntary, of any interest in any Unit or interest in rentals under this Lease; (iii) any Taxes imposed on or measured by any fees or compensation received by the Owner-Trustee or the Vendor; and (iv) Taxes which are imposed on or measured solely by the net income of the Owner-Trustee or the Vendor if and to the extent that such Taxes are in substitution for or reduce the Taxes payable by any other person which the Lessee has not agreed to pay or indemnify against pursuant to this §6; *provided, however,* that the

Lessee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in the next succeeding paragraph. The Lessee further agrees to pay on or before the time or times prescribed by law any tax imposed on or measured solely by the net income of the Lessee (or the affiliated group, within the meaning of section 1504 of the Internal Revenue Code of 1954, as amended, of which the Lessee is a member) under the laws of the United States or of any state or political subdivision thereof, or of any foreign country or subdivision thereof which, if unpaid, might result in a lien or other encumbrance upon any Unit; *provided, however*, that the Lessee shall not be required to pay any such tax during the period it may be contesting the same.

If claim is made against the Owner-Trustee, the Owner or the Vendor for any Taxes indemnified against under this §6, such party shall promptly notify the Lessee. If reasonably requested by the Lessee in writing, the Owner-Trustee or the Vendor, as the case may be, shall, upon receipt of any indemnity satisfactory to it and to the Owner for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Lessee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Lessee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of the Owner-Trustee, the Owner or the Vendor; provided that, no proceeding or actions relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Owner-Trustee, the Owner or the Vendor in any such proceeding or action) without the prior written consent of the Owner-Trustee, the Owner or the Vendor, as the case may be. If the Owner-Trustee, the Owner or the Vendor shall obtain a refund of all or any part of such Taxes previously reimbursed by the Lessee in connection with any such contest or an amount representing interest thereon, the Owner-Trustee or the Vendor, as the case may be, or the Owner shall pay the Lessee the amount of such refund or interest net of expenses; *provided, however*, that no Event of Default and no event which with notice or lapse

of time or both would constitute an Event of Default shall have occurred and be continuing.

In case any report or return is required to be made with respect to any obligation of the Lessee under this §6 or arising out of this §6, except obligations resulting from the second sentence of the first paragraph of this §6 the Lessee shall either make such report or return in such manner as will show the interests of the Owner-Trustee in the Units, or shall promptly notify the Owner-Trustee, the Owner and the Vendor of such requirement and shall make such report or return in such manner as shall be satisfactory to the Owner-Trustee and the Vendor. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Lessee.

All the obligations of the Lessee under this §6 shall survive and continue, but only with respect to periods included in the term of this Lease, notwithstanding payment in full of all amounts due under the Security Document or the termination of this Lease. Payments due from the Lessee to the Owner-Trustee, the Owner or the Vendor under this §6 shall be made directly to the party indemnified.

§7. *Payment for Casualty Occurrences; Insurance.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed, irreparably damaged, or permanently rendered unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for a period of 90 consecutive days, except by requisition for use by the United States Government or except by sublease pursuant to §12 hereof (such occurrences except such requisition for use by the United States Government and except such sublease being hereinafter called Casualty Occurrences) during the term of this Lease, or until such Unit shall have been returned in the manner provided in §11 or 14 hereof, the Lessee shall promptly and fully notify the Owner-Trustee and the Vendor with respect thereto. On the Payment Date (as defined in Article 4 of the Security Document) next succeeding such notice the Lessee shall pay to the Owner-Trustee an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with Schedule B hereto. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit

shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Owner-Trustee shall be entitled to recover possession of such Unit.

If the date upon which the making of such payment by the Lessee in respect of any Unit is required as aforesaid shall be after the term of this Lease in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term but the Lessee, in addition to paying the Casualty Value for such Unit (which shall be the same percentage of the Purchase Price as is indicated in Schedule B hereto opposite the last rental payment date), shall pay interest thereon from the end of such term to the date of such payment at the prime rate of interest which Morgan Guaranty Trust Company of New York, New York charges on the date of such payment for 90-day unsecured loans to large corporate borrowers of the highest credit standing.

The Owner-Trustee hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof before and after the expiration of this Lease, at the best price obtainable on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Owner-Trustee, the Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit plus reasonable expenses properly incurred by the Lessee in disposing of such Unit and shall pay any excess to the Owner-Trustee.

The Casualty Value of each Unit as of the payment date on which payment is to be made as aforesaid shall be the percentage of the Purchase Price of such Unit set forth in Schedule B hereto opposite the number which corresponds to such date.

In the event of the requisition for use by the United States Government of any Unit during the term of this Lease or any renewal thereof, all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease or any renewal thereof, the Lessee shall be obligated to return such Unit to the Owner-Trustee pursuant to §11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease or any renewal thereof, but Lessee shall in all other respects comply with the provisions of said §11 or 14, as the case may be, with respect

to such Unit. All payments received by the Owner-Trustee or the Lessee from the Government for the use of such Unit during the term of this Lease or any renewal thereof shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by the Owner-Trustee or the Lessee from the Government for the use of such Unit after the term of this Lease or any renewal thereof, shall be paid over to, or retained by, the Owner-Trustee.

Except as hereinabove in this §7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee shall at all times while this Lease is in effect maintain or cause to be maintained with such insurers as may be acceptable to the Owner-Trustee and any assignee hereof, property and public liability insurance in respect of the Units at the time subject hereto against all risks of liability in excess of \$2,202,000 for damage to the property of, or for personal injury suffered by, third persons and insured against by the Lessee on similar equipment (except in each case as otherwise agreed to by the Owner-Trustee). The Lessee shall have the right to self-insure with respect to the Units against all risk of property damage, casualty and public liability up to \$2,202,000. The Owner-Trustee recognizes that such self-insurance is customary for the Lessee and is contemplated herein. In the event that the Lessee abandons or significantly alters its policy of self-insurance or decides to insure similar equipment owned by it, then the Lessee shall at all times while this Lease is in effect maintain or cause to be maintained with such insurers as may be acceptable to the Owner-Trustee and any assignee hereof, property, casualty and public liability insurance in respect of the Units at the time subject hereto in amounts and against risks insured against by the Lessee on such similar equipment (except in each case as otherwise agreed to by the Owner-Trustee).

All insurance policies maintained pursuant to this Lease shall: (i) name the Owner-Trustee, as owner of the Equipment, the Owner, the Vendor and any assignee thereof as additional insureds with respect to the Equipment and shall insure the Owner-Trustee's, the Owner's, the

Vendor's and such assignee's interests, regardless of any breach or violation by the Lessee of any warranties, declarations or conditions contained in such policies; (ii) provide that all insurance proceeds with respect to the Equipment shall be adjusted by the Lessee so long as no Event of Default shall have occurred and be continuing; (iii) provide that any losses with respect to the Equipment shall be payable notwithstanding any act, failure to act or negligence of any named insured or any other person; (iv) provide that any losses shall be payable notwithstanding the use of the Equipment for purposes more hazardous than permitted by the terms of the policy; (v) provide that any losses shall be payable notwithstanding any foreclosure or other proceeding or notice of sale relating to the Equipment or this Lease or the Security Document; (vi) provide that any losses shall be payable notwithstanding any change in the title or ownership of the Equipment; and (vii) provide that no cancelation thereof shall be effective until at least 30 days after the giving of notice by the insurer thereunder to the Owner-Trustee, the Owner, the Vendor, any assignee thereof and the Lessee; and (viii) so long as any portion of the Conditional Sale Indebtedness shall remain unpaid under the Security Document, in the case of any casualty insurance policies, provide that losses, if any, in respect thereof shall be payable to the Vendor under a standard mortgage loss payable clause satisfactory to the Vendor. Any insurance maintained by Lessee pursuant to this §7 may be evidenced by blanket insurance policies covering the Equipment and other property or assets of the Lessee.

Upon the execution of this Lease, and thereafter not less than 15 days prior to the expiration dates of the expiring policies theretofore delivered pursuant to this §7, the Lessee shall deliver to the Owner-Trustee duplicate originals of all policies (or in the case of blanket policies, certificates thereof issued by the insurers thereunder) for the insurance maintained pursuant to this §7; *provided, however*, that if the delivery of a formal policy or certificate, as the case may be, is delayed, the Lessee shall deliver an executed binder with respect thereto and shall deliver the formal policy or certificate, as the case may be, upon receipt thereof.

There shall be no apportionment of premiums in respect of insurance maintained pursuant to this §7 at the expiration or any termination of this Lease; and the Lessee may cancel any such policies as of such

expiration or termination and obtain any premium refunds incident thereto. Provided that no Event of Default shall have occurred and be continuing, the Lessee shall be entitled to any premium refund or dividend received by the Owner-Trustee or the Lessee on account of any insurance maintained by the Lessee pursuant to this §7.

In the event that the Lessee shall fail to maintain insurance as herein provided, the Owner-Trustee may at its option provide such insurance unless, after telegraphic notice from the Owner-Trustee to the Lessee of such failure upon discovery thereof by the Owner-Trustee, the Lessee gives immediate telephonic or telegraphic assurances that such failure will be cured and such assurances are satisfactory to the Owner-Trustee in the exercise of its reasonable discretion. In the event the Owner-Trustee provides insurance pursuant to this paragraph, the Lessee shall, upon demand from time to time, reimburse the Owner-Trustee for the cost thereof together with interest, on the amount of the cost to the Owner-Trustee of such insurance which the Lessee shall have failed to maintain, at the rate per annum specified in §16 hereof.

Any insurance proceeds received by the Owner-Trustee or the Vendor as the result of insurance carried by the Lessee, or condemnation payments received by the Owner-Trustee or the Vendor in respect of Units suffering a Casualty Occurrence, shall be deducted from the amounts payable by the Lessee to the Owner-Trustee in respect of Casualty Occurrences pursuant to this §7, and, in the case of such insurance proceeds, any amount received by the Owner-Trustee or the Vendor which exceeds the Casualty Value in respect of such Casualty Occurrences shall be paid to the Lessee. If the Owner-Trustee or the Vendor shall receive any such insurance proceeds or condemnation payments with respect to any Units after the Lessee shall have made payments with respect to such Units pursuant to this §7 without deduction for such insurance proceeds or such condemnation payments, the Owner-Trustee or the Vendor, as the case may be, shall pay to the Lessee all such proceeds and condemnation payments up to an amount equal to such payments made by the Lessee pursuant to this §7 and any balance of such insurance proceeds or condemnation payments shall remain the property of the Owner-Trustee. All insurance proceeds or condemnation payments received by the Owner-Trustee or the Vendor in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Owner-Trustee or the Vendor, as



the case may be, that any damage to such Unit in respect of which such proceeds were paid has been fully repaired or that such proceeds will be promptly employed by the Lessee to fully repair such damage.

§8. *Reports.* On or before April 1 in each year, commencing with the calendar year 1976, the Lessee will furnish to the Owner-Trustee, the Owner and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Document, the amount, description and numbers of all Units that have suffered a Casualty Occurrence or to the knowledge of the Lessee are then undergoing repairs (other than running repairs) or are then withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as the Owner-Trustee or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by §5 hereof and the Security Document have been preserved or replaced. The Owner-Trustee shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Owner-Trustee may request during the continuance of this Lease.

§9. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification.* NEITHER THE OWNER-TRUSTEE NOR THE OWNER NOR THE VENDOR MAKES, HAS MADE OR SHALL BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND NEITHER THE OWNER-TRUSTEE NOR THE OWNER NOR THE VENDOR MAKES ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE NOR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT (EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE), IT BEING

AGREED THAT ALL SUCH RISKS, AS BETWEEN THE OWNER-TRUSTEE, THE VENDOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE; but the Owner-Trustee hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Owner-Trustee and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Owner-Trustee may have against the Builder, including, but not limited to, any claims and rights arising under the provisions of Items 3 and 4 of Annex A to the Security Document. The Owner-Trustee, the Owner and the Vendor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstance in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance or repair of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as among the Lessee, the Vendor and the Owner-Trustee that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Owner-Trustee or the Vendor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Owner-Trustee, the Owner and the Vendor, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any Unit, the Lessee will fully conform therewith

at its own expense; *provided, however*, that the Lessee shall not furnish any part of the cost of any alteration, replacement or addition of or to any part on any Unit except for alterations, replacements or additions that are owned by the Lessee and are readily removable without causing material damage to the Units and except for alterations or replacements which constitute ordinary maintenance and repairs made by the Lessee pursuant to the third paragraph of this §9; *provided further*, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Owner-Trustee or the Vendor, adversely affect the property or rights of the Owner-Trustee or the Vendor under this Lease or under the Security Document.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good order and proper repair.

Any and all additions to any Unit and any and all parts installed on or replacements made to any Unit (not including, however, any parts installed on and additions and replacements made to any Unit any part of whose cost is furnished by the Lessee and which are readily removable without causing material damage to such Unit, but including parts installed on and replacements made to any Unit which constitutes ordinary maintenance and repairs made by the Lessee pursuant to the preceding paragraph) shall be considered accessions to such Unit and, without cost or expense to the Owner-Trustee or the Vendor, there shall immediately be vested in the Owner-Trustee and the Vendor the same interests in such accessions as the interests of the Owner-Trustee and the Vendor in such Unit. In addition to the obligation of the Lessee to furnish any parts or replacements constituting ordinary maintenance and repairs made by the Lessee to any Unit pursuant to the preceding paragraph, the Lessee may furnish the cost, or any part thereof, of any additions, parts or replacements to any Unit, but only so long as they are owned by the Lessee and are readily removable without causing material damage to any such Unit. The Lessee shall not permit any addition, part or replacement to be attached or affixed to any Unit if any part of the cost thereof is furnished by any sub-

lessee or other user of such Unit unless such sublessee or other user owns such addition, part or replacement and it is readily removable without causing material damage to such Unit. The Lessee will have the right at any time to remove at its own expense any additions to any Unit and any and all parts installed on or replacements made to any Unit which are owned by the Lessee, provided that the Lessee immediately after such removal repairs, or causes the repair of any damage to any such Unit caused by such removal.

The Lessee shall pay, and shall protect, indemnify and hold the Owner-Trustee, the Owner, the Vendor and any assignee thereof, and their respective successors, assigns, agents and servants (hereinafter called Indemnified Persons), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising, or alleged to arise out of this Lease or the Units, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, non-delivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof, (ii) any latent and other defects whether or not discoverable by the Owner-Trustee or the Lessee, (iii) any claim for patent, trademark or copyright infringement, (iv) any claims based on strict liability in tort, (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Owner-Trustee, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof, (vi) any violation, or alleged violation, of any provision of this Lease (except by the Owner-Trustee) or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof, or (vii) any claim

arising out of any of the Owner-Trustee's obligations under the Lease Assignment, the Security Document or the Participation Agreement, except to the extent such claim arises from an act or omission of the Owner-Trustee. The Lessee shall be obligated under this §9, irrespective of whether any Indemnified Person shall also enjoy rights of indemnification with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this §9 without first resorting to any such other rights of indemnification *provided, however*, that with respect to any matter against which such Indemnified Person has received indemnification payments from any person other than the Lessee, the Lessee shall be obligated under this §9 to indemnify such Indemnified Person only to the extent, if any, that such indemnification payments do not fully indemnify such Indemnified Person against such matter. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person, as the case may be, and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this §9, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person, as the case may be, in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Owner-Trustee each agrees to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this §9 by the Lessee, and provided that no Event

of Default (or other event which with lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, it shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given, including any right of such Indemnified Person to indemnification from any person other than the Lessee. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this §9 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made.

The Lessee further agrees to indemnify, protect and hold harmless the Vendor and the Builder as third party beneficiaries hereof from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to the Builder of any claim known to the Lessee from which liability may be charged against the Builder hereunder.

The indemnities contained in this §9 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by any Indemnified Person. None of the indemnities in this §9 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

The Lessee agrees to assist and cooperate with the Owner-Trustee within a reasonable time prior to the required date of filing in the preparation and filing of any and all reports (other than income tax re-

turns) required to be filed by the Owner-Trustee with any federal, state or other regulatory authority by reason of the ownership by the Owner-Trustee of, or any interest of the Vendor with respect to, the Units or the leasing thereof to the Lessee.

§10. *Default.* If, during the continuance of this Lease, one or more of the following events (each such event being hereinafter sometimes called an Event of Default) shall occur:

A. payment of any part of the rental provided in §3 hereof or payment in respect of any Casualty Occurrence pursuant to §7 hereof or of any voluntary termination pursuant to §19 hereof shall not be made by the Lessee, and such failure to make payment shall continue for five business days after such payment is due; or

B. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Security Document, the Participation Agreement or the Consent, and such default shall continue for 30 days after written notice from the Owner-Trustee or the Vendor to the Lessee specifying the default and demanding that the same be remedied; *provided, however*, that if the Lessee diligently undertakes to remedy such default as soon as practicable after the aforementioned written notice, then no Event of Default shall occur after such 30 days so long as such diligent undertaking continues during a period no longer than 90 days after such written notice; or

C. the entry of a decree or order by a court having jurisdiction in the premises adjudging the Lessee bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Lessee under the Federal Bankruptcy Act or any other applicable Federal or state law, or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Lessee or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 90 consecutive days; or

D. the institution by the Lessee of proceedings to be adjudicated bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under the Federal Bankruptcy Act or any other applicable Federal or state law, or the consent by it to the filing of any such petition or to the

appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Lessee or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Lessee in furtherance of any such action; or

E. an event of default set forth in Article 15 of the Security Document shall have occurred and be continuing;

then, in any such case, the Owner-Trustee, at its option, may,

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Owner-Trustee may by its agents enter upon the premises of the Lessee or other premises, in so far as the Lessee may be lawfully authorized to so permit, where any of the Units may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Owner-Trustee shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Owner-Trustee reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 6% per annum discount, compounded quarterly from the respective



dates upon which rentals would have been payable hereunder had this Lease not been terminated, and (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Owner-Trustee or the Vendor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental.

The remedies in this Lease provided in favor of the Owner-Trustee shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by itself or on its behalf.

The failure of the Owner-Trustee to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

The Lessee also agrees to furnish the Owner-Trustee, the Owner and the Vendor, promptly upon any responsible officer's becoming aware of any condition which constitutes an Event of Default under the Lease or which, after notice or lapse of time or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who in the normal performance of his operational responsibilities would have knowledge of such matter and the requirements of this Lease with respect thereto.

§11. *Return of Units Upon Default.* If the Vendor shall demand possession of the Units pursuant to Article 16 of the Security Document, the Lessee shall forthwith deliver possession of the Units to the Owner-Trustee and shall give prompt telegraphic and written notice to the

Association of American Railroads and all railroads having possession of any Unit so to return such Units. Each Unit returned to the Owner-Trustee pursuant to this §11 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear and modifications, if any, permitted by this Lease excepted, (ii) have attached or affixed thereto any special device, rack or assembly considered an accession thereto as provided in §9 hereof and have removed therefrom any special device, rack or assembly not so considered an accession thereto and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable. For the purpose of delivering possession of any Unit or Units to the Owner-Trustee as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner cause such Units to be transported to such location as shall reasonably be designated by the Owner-Trustee, provided that such location shall in any event be in the United States, including the District of Columbia but excluding Alaska, Hawaii and all United States territories and possessions, and there assembled,

(b) furnish and arrange for the Owner-Trustee to store such Units at such location as is designated by the Owner-Trustee in the immediately preceding subparagraph (a) on any lines of the Lessee or of a nationally recognized and reputable storer of railroad equipment approved by the Owner-Trustee, stored in accordance with railroad industry standards for like or similar equipment, until such Units have been sold, leased or otherwise disposed of by the Owner-Trustee, and

(c) cause the Units to be moved to such interchange point or points in the United States, including the District of Columbia but excluding Alaska, Hawaii and all United States territories and possessions, as shall be designated by the Owner-Trustee upon any sale, lease or other disposal of all or any of the Units.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Owner-Trustee shall be entitled to a decree against the Lessee requiring specific performance of the

covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Owner-Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this §11, the Lessee hereby irrevocably appoints the Owner-Trustee as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Owner-Trustee, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§12. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Owner-Trustee without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Owner-Trustee other than the Vendor except upon written notice of such assignment from the Owner-Trustee; *provided, however*, that no such assignment shall violate the Securities Act of 1933, any successor statute thereto as may be hereafter enacted or any applicable Blue Sky or state securities laws. All the rights of the Owner-Trustee hereunder (including, but not limited to, the rights under §§6, 7 and 10 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Owner and the Owner's and the Owner-Trustee's assigns.

So long as no Event of Default exists hereunder and the Lessee shall have fully complied with the provisions of this §12, the Lessee shall be entitled to the possession of the Units and also to sublease the Units to, or to permit their use under the terms of car contracts by, a sublessee or user incorporated in the United States of America (or any State thereof or the District of Columbia), upon lines of railroad owned or operated by a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia), or over which such railroad company or companies have trackage rights or rights for operation of their trains, and upon connecting and other carriers in the usual interchange of traffic in the continental United States, Canada and Mexico, but only upon and sub-

ject to all the terms and conditions of this Lease; *provided, however*, that if the Lessee subleases or permits the use of any Unit in Canada (or any Province or Territory thereof) or in Mexico (or any State or the Federal District thereof), the Lessee shall first have (a) taken all necessary action to protect the right, title and interest of the Lessor and the Vendor in the Units to be so subleased or used and (b) furnished the Owner-Trustee and the Vendor with an opinion of Canadian or Mexican counsel, as the case may be, satisfactory to the Owner-Trustee and the Vendor to the effect that such action is all that is necessary to protect the right, title and interest of the Owner-Trustee and the Vendor in such Units; *provided further*, that no Units shall be used predominantly outside the United States of America within the meaning of section 48(a) of the Internal Revenue Code of 1954, as amended to the date hereof, nor shall the Lessee sublease the Units to, or permit their use by, any person in whose hands such Units would not qualify as "section 38" property within the meaning of such Code.

Any such sublease may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession of the Units included in such sublease and the use thereof; *provided, however*, that every such sublease shall be subject to the rights and remedies of the Owner-Trustee under this Lease in respect of the Units covered by such sublease upon the occurrence of an Event of Default hereunder.

The Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge, security interest or other encumbrance (except any sublease or car contract as aforesaid and other than an encumbrance resulting from claims against the Owner-Trustee or the Vendor not related to the ownership or leasing of, or the security interest of the Vendor to, the Units) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interest of the Owner-Trustee, the Vendor or the Lessee therein. The Lessee shall not, without the prior written consent of the Owner-Trustee, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of this §12.

Nothing in this §12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units

or possession of the Units to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have specifically assumed the obligations of the Lessee hereunder and under the Consent by an appropriate instrument in writing) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety or which is a wholly-owned subsidiary of the Lessee, provided that such assignee or transferee will not, upon the assignment or transfer to it of the leasehold interest of the Lessee under this Lease, be in default under any provision of this Lease and *provided further*, that if the assignee or transferee is a wholly-owned subsidiary of the Lessee, then the Lessee shall guarantee the performance by such assignee or transferee of its obligations under this Lease.

§13. *Renewal and Other Options.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may, by written notice delivered to the Owner-Trustee not less than one year prior to the end of the original term of this Lease, elect to extend the term of this Lease in respect of not less than twenty of the Units then covered by this Lease, for a period not less than one nor more than ten years commencing on the scheduled expiration of the original term of this Lease, at a "Fair Market Rental" payable in quarterly payments on the quarterly anniversaries of the expiration of the original term.

In the event the Lessee does not elect to extend the original term of this Lease prior to the time provided for such election in this §13, the Owner-Trustee hereby agrees that if it should thereafter determine to sell any Units which are subject to this Lease at the end of such term, which sale it does not now contemplate, it will promptly give the Lessee written notice of such determination; *provided, however*, that the Owner-Trustee will in no event be obligated hereby to give such notice less than 30 days before the end of such term. The Lessee shall thereupon have the option, during a period of 30 days following the giving of such notice by the Owner-Trustee, to elect to purchase such Units for cash at their "Fair Market Value". The Lessee may exercise this option by giving written notice to the Owner-Trustee, within 30 days after notice was given by the Owner-Trustee, that the Lessee elects to purchase such Units. Upon the giving by the Lessee of

such notice of election to purchase, the Lessee will be obligated to purchase from the Owner-Trustee, and the Owner-Trustee will be obligated to sell to the Lessee, such Units at their "Fair Market Value" on a date of purchase to be agreed upon by the Owner-Trustee and the Lessee, but such date of purchase will in no event be later than 10 days after determination of "Fair Market Value" as provided hereinafter in this §13, the purchase price to be payable at such place as the Owner-Trustee or the Owner shall reasonably specify in writing and in the manner provided for rental payments pursuant to §3 hereof. This Lease (including the obligation to pay rent) shall be extended until such date of purchase.

"Fair Market Rental" shall be determined on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental. If, after 60 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease, the Owner-Trustee and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such rental shall be determined in accordance with the foregoing definition by the procedure set forth in the second succeeding paragraph.

"Fair Market Value" shall be determined on the basis of, and shall be equal in amount to, the price which would obtain in an arm's-length transaction between an informed and willing buyer and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such price. If, after 30 days from the giving of notice by the Lessee of the Lessee's election to purchase as provided in this §13, the Owner-Trustee and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units to be purchased, such value shall be determined in accordance with the foregoing definition by the procedure set forth in the next succeeding paragraph.

If either party to determination of Fair Rental Value or Fair Market Value, as the case may be, shall have given written notice to the

other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, each party shall appoint an independent appraiser within 25 business days after such notice is given, and the two appraisers so appointed shall within 35 business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 business days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term or the Fair Market Value of the Units to be purchased, as the case may be, as soon as practicable and in any event not later than 90 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental or Fair Market Value, as the case may be, of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental or Fair Market Value and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedures shall be borne by the Lessee.

§14. *Return of Units upon Expiration of Term.* As soon as practicable on or after the termination of the original or any extended term of this Lease, and in any event not later than 90 days thereafter, the Lessee will, at its own cost and expense, at the request of the Owner-Trustee, cause each Unit to be transported to such point or points as

shall be reasonably designated by the Owner-Trustee immediately prior to such termination, provided that such point or points shall in any event be in the United States, including the District of Columbia but excluding Alaska, Hawaii and all United States territories and possessions, and arrange for the Owner-Trustee to store such Unit on any lines of the Lessee or of a nationally recognized and reputable storer of railroad equipment approved by the Owner-Trustee, stored in accordance with railroad industry standards for like or similar equipment for a period not exceeding 90 days from the date such Unit is first placed in storage pursuant to this §14; the assembly, delivery, storage and transporting of such Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Owner-Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable except in the case of negligence or intentional act of the Lessee or of its employees or agents and, except to the extent otherwise provided by law, for any injury to or the death of any person exercising, either on behalf of the Owner-Trustee or any prospective purchaser, the rights of inspection granted under this sentence. The assembly, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Owner-Trustee shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to cause the assembly, delivery, storage and transporting of the Units. Each Unit returned to the Owner-Trustee pursuant to this §14 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) have attached or affixed thereto any special device, rack or assembly considered an accession thereto as provided in §9 hereof and have removed therefrom any special device, rack or assembly not so considered an accession thereto and (iii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable.

§15. *Recording.* The Lessee, at its own expense, will cause this Lease, the Security Document, the Lease Assignment, and the Assignment to be filed and recorded with the Interstate Commerce Com-



mission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Owner-Trustee under the Security Document and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, re-register, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Owner-Trustee or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Owner-Trustee's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Document, the Assignment or the Lease Assignment.

The Lessee will promptly furnish to the Vendor and the Owner-Trustee evidence of all such filing, registering, depositing or recording, undertaken pursuant to this §15, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Owner-Trustee. This Lease, the Security Document, the Lease Assignment and the Assignment shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§16. *Owner-Trustee's Right to Perform for the Lessee.* If the Lessee fails to perform or comply with any of its agreements contained herein, the Owner-Trustee may upon notice to the Lessee itself perform or comply with any such agreement, and the amount of the reasonable cost and expenses of the Owner-Trustee incurred in connection with such performance or compliance, together with interest on such amount at  $10\frac{3}{4}\%$  per annum, shall be payable by the Lessee upon demand.

§17. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, an amount equal to interest at a rate on the overdue rentals and other obligations for the period of time during which they are overdue equal to  $10\frac{3}{4}\%$  per annum, or such lesser amount as may be legally enforceable.

§18. *Mileage Allowance.* It is contemplated that the Lessee shall receive insofar as applicable law and regulations allow, all mileage allowance rentals and/or other compensation (hereinafter referred to as "Mileage") payable by carriers by reason of the use of the Units and if for any reason the Owner-Trustee shall receive any Mileage then (unless an Event of Default as defined in §10 shall have occurred and be continuing in which event such Mileage or portion thereof shall be retained by Owner-Trustee until such Event of Default shall no longer be continuing) the Owner-Trustee shall remit such Mileage to the Lessee promptly after the Lessee shall furnish to the Owner-Trustee, at the Lessee's sole expense, either (i) evidence satisfactory to the Owner-Trustee acting reasonably or (ii) a ruling of the Interstate Commerce Commission to the effect that the remittance thereof to the Lessee will not constitute a rebate within the meaning of 49 U.S.C. Section 41, as amended, or (iii) an opinion of counsel to the same effect.

§19. *Voluntary Termination.* Unless an Event of Default or other event which, with notice, demand and/or lapse of time, would constitute an Event of Default shall have occurred and be continuing hereunder, the Lessee shall be entitled, at its option, upon at least 90 days' prior written notice to the Owner-Trustee and the Vendor, to terminate this Lease if the Lessee shall have made a good faith determination that all (but not less than all) of the Units have become obsolete or otherwise uneconomical for use in the Lessee's operations, which notice shall be signed by the Chairman of the Board of Directors or the President and shall state that such Units have become obsolete or otherwise uneconomical for use in the Lessee's operations; *provided, however*, that such termination shall become effective only on a rental payment date specified in §3 hereof (hereinafter in this §19 called the Termination Date) and, in no event, prior to ten years after the second Closing Date; and *provided further*, that such termination shall not take effect unless the Lessee shall have fully complied with the succeeding paragraphs of this §19.

During the period from the giving of such notice to the Termination Date, the Lessee, as agent for the Owner-Trustee, shall use its best efforts to obtain bids for the purchase of all the Units on an "as is, where is" basis, and the Lessee shall certify to the Owner-Trustee in writing the amount of each bid received and the name and address of the person

(who shall not be the Lessee or any person, firm or corporation affiliated with the Lessee) submitting such bid. An "affiliate" of the Lessee shall mean any person who possesses, directly or indirectly, the right to vote at least 20% of the voting securities of the Lessee, and any person who, directly or indirectly, controls or is controlled by or is under common control with the Lessee, and "control" (including "controlled by" and "under common control with"), as used with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or control the direction of the management and policies of such person, whether through the ownership of voting securities, by contract or otherwise. On the Termination Date, the Owner-Trustee shall, without recourse or warranty, sell the Units for cash to whomsoever shall have submitted the highest bid therefor prior to the Termination Date, and thereupon the Lessee shall cause the Units to be delivered to the Owner-Trustee in accordance with the terms of §14 hereof. If the sale of all the Units shall not occur on the Termination Date, the Lessee shall not cause such delivery of the Units to the Owner-Trustee; and this Lease shall continue in full force and effect. The Owner-Trustee shall be under no duty to (but may) solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take any action in connection with any such sale other than as expressly provided in this §19.

The total sale price realized at any such sale of the Units shall be retained by the Owner-Trustee and, in addition, the Lessee shall pay to the Owner-Trustee on the Termination Date the excess, if any, of (i) the Termination Value of the Units, which shall be the percentage of the Purchase Price of the Units set forth in Schedule C opposite the number which corresponds to the Termination Date, over (ii) the proceeds of such sale less all expenses incurred by the Owner-Trustee in connection with such sale or with the collection or distribution of such payment. The Lessee shall also be obligated to pay the Owner-Trustee on the Termination Date any and all rentals and other sums due hereunder with respect to the Units accrued up to and including the Termination Date. In the event of such sale and compliance by the Lessee with all the provisions of this §19, the obligation of the Lessee to pay rental hereunder on all rental payment dates commencing after the Termination Date shall terminate.

§20. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when delivered to such other party or deposited in the United States mails, first-class postage prepaid, addressed as follows:

if to the Vendor, at Post Office Box 368, Indianapolis, Indiana 46206, attention of Securities Division;

if to the Owner-Trustee, at 130 John Street, New York, New York 10038, attention of Corporate Trust and Agency Division, with a copy to the Owner, at P. O. Box 8300, Stamford, Connecticut 06904, attention of Manager—Operations, Leasing and Industrial Loans and attention of Loan Officer—Rail; and

if to the Lessee, at 910 Market Street, Wilmington, Delaware 19899, attention of Director of Traffic Department;

or addressed to any party at such other address as such party shall hereafter furnish to the other parties in writing. Any certificate, document or report required to be furnished by any party hereto to the other parties shall be delivered to the address set forth above for such party. Any notice to the Lessee regarding the Lessee's failure to perform any obligation hereunder shall also be furnished to the Owner-Trustee.

§21. *Owner-Trustee Acting as Trustee.* The representations, undertakings and agreements herein made on the part of the Owner-Trustee are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement.

Whenever the term Owner-Trustee is used in this Lease it shall apply and refer to the Owner-Trustee and the Owner and any assignee of the Owner-Trustee.

§22. *No Recourse.* No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the Owner-Trustee or the Lessee, or against the Owner or any other beneficiary of a trust for which the Owner-Trustee is acting as trustee, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional

provision, statute or otherwise, of incorporators, stockholders, directors, officers, as such, or beneficiaries being forever released as a condition of and as consideration for the execution of this Lease.

§23. *Severability; Effect and Modification of Lease; Third Party Beneficiaries.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, in effective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Owner-Trustee and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto, except the Participation Agreement. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the Owner-Trustee and the Lessee.

Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the Owner, the Vendor and the permitted successors and assigns of a party) and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party except as aforesaid.

§24. *Other Obligations.* In the event that any of the covenants of the Owner-Trustee under the first paragraph of Article 7, the second, fifth and seventh paragraphs of Article 16, and under Articles 6, 8, 9, 10, 12, 13 and 18 of the Security Document (without reference to any limitation of liability contained in Article 21 or the last paragraph of Article 4 of the Security Document) are not complied with through the performance by the Lessee of its obligations specifically provided for in this Lease, the Lessee shall, as additional obligations under this Lease, take all such action as may be necessary to enable compliance to be made with such covenants under the Security Document, *provided, however*, that in no event shall the Lessee be obligated to pay or discharge any claims, liens, charges or security interests claimed by any party from, through or under the Owner-Trustee or its successors or assigns, not

arising out of the transactions contemplated hereby. The Owner-Trustee agrees not to hinder or obstruct, or cause the hindrance or obstruction of, any performance by the Lessee pursuant to this §24.

§25. *Execution.* This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor shall be deemed to be the original counterpart. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§26. *Section Headings and Table of Contents.* All Section headings and the Table of Contents are inserted for convenience only and shall not affect any construction or interpretation of this Lease.

§27. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

HERCULES INCORPORATED

by W C Brown  
PRESIDENT

[CORPORATE SEAL]

Attest:

R P Morrison  
Asst. Secretary

UNITED STATES TRUST COMPANY OF  
NEW YORK, as Trustee

by Richard B. Rubin  
Asst. Vice President

[CORPORATE SEAL]

Attest:

Gene B. Scocca  
Assistant Secretary

STATE OF DELAWARE }  
COUNTY OF NEW CASTLE } SS.:

On this 6th day of August, 1975, before me personally appeared Werner C. Brown, to me personally known, who, being by me duly sworn, says that he is PRESIDENT of HERCULES INCORPORATED, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Regina C. Dedjee  
Notary Public

[NOTARIAL SEAL]

STATE OF NEW YORK, }  
COUNTY OF NEW YORK, } SS.:

On this 4th day of August, 1975, before me personally appeared Richard Borklitz, to me personally known, who, being by me duly sworn, says that he is Vice President of UNITED STATES TRUST COMPANY OF NEW YORK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its By-laws, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Eileen P. Young  
Notary Public  
EILEEN P. YOUNG  
Notary Public, State of New York  
No. 41-4604136  
Qualified in Queens County  
Certificate filed in New York County  
Commission Expires March 30, 1976

[NOTARIAL SEAL]



**SCHEDULE A**  
**to Lease**

<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Quantity</u>	<u>Lessee's Identifying Numbers (Both Inclusive)</u>
20,000 gallon capacity tank car	TMI	26	HPCX 20700- 20725

## SCHEDULE B

### to Lease

Quarterly Anniversary Dates of the Second Closing Date	Percentage	Quarterly Anniversary Dates of the Second Closing Date	Percentage
Second Closing Date .	101.0837	32 .....	83.3230
1 .....	105.5864	33 .....	82.5811
2 .....	106.2428	34 .....	81.8028
3 .....	106.8298	35 .....	80.9883
4 .....	107.3612	36 .....	80.1410
5 .....	107.8363	37 .....	79.2610
6 .....	108.2551	38 .....	78.3479
7 .....	108.6231	39 .....	77.4019
8 .....	108.9404	40 .....	76.4264
9 .....	109.2603	41 .....	75.4217
10 .....	109.4205	42 .....	74.3922
11 .....	109.5731	43 .....	73.3402
12 .....	109.6204	44 .....	72.2677
13 .....	103.0367	45 .....	71.1746
14 .....	103.1244	46 .....	70.0608
15 .....	103.1628	47 .....	68.9260
16 .....	103.1226	48 .....	67.7712
17 .....	103.0945	49 .....	66.5966
18 .....	103.0199	50 .....	65.4041
19 .....	102.8983	51 .....	64.1938
20 .....	102.7293	52 .....	62.9655
21 .....	95.8497	53 .....	61.7188
22 .....	95.5927	54 .....	60.4536
23 .....	95.2909	55 .....	59.1694
24 .....	94.9444	56 .....	57.8661
25 .....	94.5563	57 .....	56.5434
26 .....	94.1267	58 .....	55.2009
27 .....	93.6550	59 .....	53.8383
28 .....	93.1411	60 .....	52.4554
29 .....	85.3302	61 .....	51.0519
30 .....	84.6993	62 .....	49.6274
31 .....	84.0291	63 .....	48.1816

<u>Quarterly Anniversary Dates of the Second Closing Date</u>	<u>Percentage</u>	<u>Quarterly Anniversary Dates of the Second Closing Date</u>	<u>Percentage</u>
64 .....	46.7141	73 .....	32.4766
65 .....	45.2247	74 .....	30.7734
66 .....	43.7130	75 .....	29.0445
67 .....	42.1787	76 .....	27.2895
68 .....	40.6213	77 .....	25.5080
69 .....	39.0406	78 .....	23.6996
70 .....	37.4362	79 .....	21.8637
71 .....	35.8076	80 .....	20.0000
72 .....	34.1546		

# SCHEDULE C

## to Lease

Quarterly Anniversary Dates of the Second Closing Date	Percentage	Quarterly Anniversary Dates of the Second Closing Date	Percentage
Fortieth Quarterly Anniversary of the Second Closing Date . . . .	78.1906%	61 . . . . .	51.5354%
41 . . . . .	77.1148	62 . . . . .	50.0648
42 . . . . .	76.0149	63 . . . . .	48.5748
43 . . . . .	74.8934	64 . . . . .	47.0650
44 . . . . .	73.7521	65 . . . . .	45.5352
45 . . . . .	72.5911	66 . . . . .	43.9852
46 . . . . .	71.4103	67 . . . . .	42.4146
47 . . . . .	70.2095	68 . . . . .	40.8232
48 . . . . .	68.9896	69 . . . . .	39.2108
49 . . . . .	67.7509	70 . . . . .	37.5771
50 . . . . .	66.4955	71 . . . . .	35.9216
51 . . . . .	65.2233	72 . . . . .	34.2443
52 . . . . .	63.9343	73 . . . . .	32.5447
53 . . . . .	62.6281	74 . . . . .	30.8226
54 . . . . .	61.3046	75 . . . . .	29.0777
55 . . . . .	59.9635	76 . . . . .	27.3096
56 . . . . .	58.6047	77 . . . . .	25.5182
57 . . . . .	57.2278	78 . . . . .	23.7030
58 . . . . .	55.8327	79 . . . . .	21.8637
59 . . . . .	54.4190	80 . . . . .	20.0000
60 . . . . .	52.9866		